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7 UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 CARMEN PEREZ and ANDREA
10 BROOKS, on behalf of themselves
and those similarly situated,

11 Plaintiffs,

12 v.

13
14 BATH & BODY WORKS, LLC; L
BRANDS, INC.,

15 Defendants.
16

Case No.

Unlimited Civil Case

Amended Class Action Complaint for
Fraud, Deceit, and/or Misrepresentation;
Violation of the Consumer Legal
Remedies Act; False Advertising;
Negligent Misrepresentation; Unfair,
Unlawful, and Deceptive Trade
Practices; and Restitution (Unjust
Enrichment).

Jury Trial Demanded

1 Plaintiffs Carmen Perez and Andrea Brooks bring this action on behalf of themselves and
2 all others similarly situated against Bath & Body Works, LLC and L Brands, Inc. (collectively
3 “Defendants”). Plaintiffs’ allegations against Defendants are based upon information and belief
4 and upon investigation of Plaintiffs’ counsel, except for allegations specifically pertaining to
5 Plaintiffs, which are based upon Plaintiffs’ personal knowledge.

6 **Introduction**

7
8 1. Defendants are large companies that sell skin care products under, inter alia, the brand
9 name “Bath & Body Works.” To increase their sales, Defendants trick consumers by making
10 false claims about the capabilities of their products. Defendants do not disclose to consumers that
11 their products are scientifically incapable of achieving the promised results.

12 2. This case is about one of Defendants’ product lines. Defendants market and sell a
13 series of products as “WATER” and “HYDRATING.” Defendants falsely represent that the
14 hyaluronic acid, an ingredient in the products, “attracts and retains up to 1,000x its weight in
15 water” to “instantly replenish moisture for smooth, hydrated skin” or “make skin look smoother
16 and more supple.” Defendants have profited enormously from their false marketing campaigns,
17 while their customers are left with overpriced, ineffective skin care products.

18 **Parties**

19 3. Plaintiff Carmen Perez is, and was at all relevant times, an individual and resident of
20 California. Ms. Perez currently resides in San Jose, California.

21 4. Plaintiff Andrea Brooks is, and was at all relevant times, an individual and resident
22 of California. Ms. Perez currently resides in Carpinteria, California.

23 5. Defendant Bath & Body Works, LLC is a Delaware limited liability company with its
24 principal place of business in Columbus, Ohio.

25 6. Defendant L Brands, Inc. is a Delaware corporation with its principal place of business
26 in Columbus, Ohio.

1 concurrently files herewith a declaration establishing that she purchased Bath & Body Works
 2 Water Hyaluronic Acid Hydrating Cream in a Bath & Body Works store in Milpitas, California.
 3 (Plaintiff's declaration is attached hereto as Exhibit A.)

4 14. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

5 **Substantive Allegations**

6
 7 15. The market for cosmetics is fiercely competitive. Cosmetics manufacturers continually
 8 attempt to gain market share by touting the latest ingredients in their products and marketing
 9 them as being capable of improving consumers' appearance.

10 16. Even in an industry known for hype, Defendants' outrageous marketing practices
 11 stand out among those of their competitors. Defendants position themselves as being a
 12 "specialty" retail brand with significant benefits for consumers' health and physical appearance.
 13 As discussed below, Defendants' claims about their skin care products are not just hype; rather,
 14 they are demonstrably false.

15 17. Under the brand name "Bath & Body Works,"¹ Defendants are large skin care
 16 companies that market, advertise and sell products such as skin creams, lotions, scrubs,
 17 shampoos, conditioners, scents, and body wash to consumers. Defendants sell their products at in
 18 their over 2000 company stores and on their proprietary Defendants' website,
 19 www.bathandbodyworks.com (the "Website").

20 18. Defendants understand that consumers are concerned about looking youthful, reducing
 21 the appearance of wrinkles and fine lines on their faces, and maintaining healthy, clear skin.
 22 Defendants know that consumers are therefore willing to pay more for products that promise to
 23 make them look younger, keep their skin healthy, and reverse the signs of aging.

24 19. Accordingly, Defendants have embarked on a long term advertising campaign to trick
 25 consumers into believing that many of their products contain cutting-edge scientific technologies

26 ¹ Also referred to herein as "B&BW."

that will offer younger, healthier skin, when Defendants know that their claims are false or misleading to reasonable consumers.

A. Defendants Make False and Misleading Claims About Their “Hyaluronic Acid” Line of Products.

20. Defendants sell various products as part of their “WATER” / “HYDRATING” line. These products include, without limitation:

- a. B&BW Hyaluronic Acid Hydrating Body Cream (in varying scents, e.g., “cactus water,” “rose water”);
- b. B&BW Hyaluronic Acid Hydrating Hand Cream (in varying scents);
- c. B&BW Hyaluronic Acid Hydrating Body Wash;
- d. B&BW Hyaluronic Acid Hydrating Body Gel Lotion; and
- e. B&BW Hyaluronic Acid Mineral Body Polish.

(Collectively, the “Hyaluronic Acid Products.”)

1. Defendants Falsely Represent to Consumers that the Hyaluronic Acid Products Moisturize Skin by Attracting and Retaining Up To 1000x Its Weight in Water.

21. Throughout the class period, Defendants have made false and misleading marketing to trick consumers into believing that the Hyaluronic Acid Products contain unique moisturizing properties. Specifically, Defendants falsely represent that, because of the presence of hyaluronic acid in the Hyaluronic Acid Products, the products are capable of attracting and retaining large quantities of water presumably from the atmosphere into the user’s skin, for long-lasting benefits. As explained below, however, these representations are misleading and false.

22. For example, throughout the class period, the packaging for the Hyaluronic Acid Hydrating Body Cream states that the product contains “HYALURONIC ACID” that “attracts and retains up to 1,000x its weight in water” to “instantly replenish moisture for smooth, hydrated skin” or “make skin look smoother and more supple.”

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23. The packaging further states, in bulleted language that the product:

- “attracts and retains up to 1,000x its weight in water”;
- “instantly replenish moisture for smooth, hydrated skin”;
- “make skin look smoother and more supple”;
- “Clinically tested to instantly lock in moisture”;
- “Fast-absorbing formula immediately hydrates”; and
- “Hyaluronic acid is a water loving molecule.”



1 24. Moreover, in-store personnel were instructed to inform customers of that the
2 hyaluronic acid in each product attracted and retained up to “1,000x its weight in water.”

3 25. The Website makes the exact same representations. In addition to prominently
4 featuring photographs of the Hyaluronic Acid Products’ containers, the website contains
5 descriptions of the products that mirror the representations on the packages.

6 26. The representations that Defendants make on the Hyaluronic Acid Products’ boxes
7 and containers are viewed by consumers who shop for their products, regardless of whether they
8 shop at retail stores or online. At Defendants’ instruction, retail stores make the containers
9 available for consumers to view as they shop, and also prominently place photographs of the
10 boxes and containers (which are provided by Defendants) on their websites for consumers to
11 read.

12 **2. Defendants’ Representations Regarding the Hyaluronic Acid Products Are**
13 **False.**

14 27. Defendants’ representations regarding the Hyaluronic Acid Products are false and
15 misleading.

16 28. Defendants represent that the hyaluronic acid in their Hyaluronic Acid Products can
17 attract and retain up to 1,000 times its weight in water. That representation is false. Hyaluronic
18 acid is incapable of absorbing anywhere near 1,000 times its weight in water, even when it is in
19 its anhydrous (i.e., waterless; completely dry) form.

20 29. Hyaluronic acid is the most capable of absorbing water when it is in its anhydrous
21 form. But the hyaluronic acid contained in the Hyaluronic Acid Products is already saturated
22 with water. Indeed, the first ingredient in all of the Products is water. Because the hyaluronic
23 acid contained in these products is already water-saturated, it is incapable of absorbing any
24 additional water at all, let alone “attract[ing] and retain[ing] up to 1,000x its weight in water,” as
25 Defendants claim.
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1 30. Further, even were Hyaluronic Acid Products capable of absorbing additional water
2 when applied to a consumer's face—an assumption that is unwarranted—Defendants'
3 representation that hyaluronic acid is ever capable of absorbing up to 1000 times its weight in
4 water is also false. In fact, hyaluronic acid has no particular ability to attract and retain water
5 compared to other common compounds, much less to attract and retain 1,000 times its weight in
6 water, or to do so to “replenish moisture,” “hydrate skin,” or make skin look “smoother” or
7 “more supple.”

8 31. If hyaluronic acid were capable of absorbing water in the amounts advertised, it would
9 act as a desiccant, not a moisturizer. That is because, if it were that hydroscopic, the acid would
10 tend to draw water *out* of the skin, thereby achieving the *opposite* effect as the one the company
11 advertises.

12 32. Therefore, Defendants' representations on the Hyaluronic Acid Products' packaging
13 and on the Website (i.e., (i) that the hyaluronic acid “attracts and retains up to 1,000x its weight
14 in water”; (ii) that the product “instantly replenish moisture for smooth, hydrated skin”; (iii) that
15 the product “make skin look smoother and more supple”; (iv) “Fast-absorbing formula
16 immediately hydrates”; and (v) that “Hyaluronic acid is a water loving molecule” are false.

17 33. Finally, Defendants claim that the Product was “Clinically tested to instantly lock in
18 moisture” is also false. Had Defendants actually done any “clinical testing,” they would have
19 known that all their representations were totally bogus.

20 **B. Defendants Intend to Continue to Falsely Advertise the Hyaluronic Acid Products.**

21 34. The market for beauty and skin care is robust and continues to grow. Women
22 increasingly have more disposable income, and thus are more likely to purchase more expensive
23 brands, such as those sold by Defendants. Further, men increasingly are using beauty and skin
24 care products. In addition, the ubiquity of social media has caused a surge in interest in looking
25 young and camera-ready. Moreover, as the population ages, the interest in anti-aging products
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1 has grown.

2 35. To take advantage of this growing market, Defendants have a tremendous incentive to
3 falsely advertise their Hyaluronic Acid Products, as these products tap into consumers'
4 increasing concerns over aging and interest in higher-end products. Not surprisingly, these
5 products are among some of Defendants' best sellers.

6 36. Because of the interest in these kinds of products, Defendants are able to charge
7 exorbitant amounts for their pseudo-science. Thus, given that Defendants' profits will likely
8 grow from selling over-priced products to a growing market for skin care products, Defendants
9 have an incentive to continue to make false representations.

10 **C. Plaintiffs' Experiences**

11 37. Plaintiffs are reasonably diligent consumers, and when they purchased Defendants'
12 Products, they reasonably relied on Defendants' false representations.

13 **1. Carmen Perez**

14 38. Plaintiff Carmen Perez is a consumer who is interested in beauty products.
15 Approximately two years ago, in or around February or March 2019, she visited a B&BW store
16 in Milpitas, California, where she was shopping for a moisturizing product. She saw the B&BW
17 Hyaluronic Acid Hydrating Body Cream, and read on the package that (i) the hyaluronic acid in
18 the product "attracts and retains up to 1,000x its weight in water"; (ii) that the product "instantly
19 replenish moisture for smooth, hydrated skin"; (iii) that the product "make skin look smoother
20 and more supple"; (iv) "Fast-absorbing formula immediately hydrates"; and (v) that "Hyaluronic
21 acid is a water loving molecule." She also read that the Product was "Clinically tested to
22 instantly lock in moisture." Finally, prior to her purchase, Defendants' agent confirmed and
23 remind Ms. Perez that the hyaluronic acid in the product attracts and retains up to 1,000x its
24 weight in water.

25 39. Based on these representations, Ms. Perez believed that the product was capable of
26

1 moisturizing and hydrating her skin. Accordingly, she decided to purchase the product. She paid
2 approximately \$16, but the purchase included other B&BW products that are not at issue here.

3 40. She repeatedly used the product, but did not observe any improvement to her skin.

4 41. Had Ms. Perez known that the Hyaluronic Acid Hydrating Body Cream is incapable of
5 attracting and retaining up to up to 1,000x its weight in water, she would not have purchased it,
6 or would have paid less for it.

7 42. Ms. Perez continues to want to purchase products that could help improve the
8 appearance of her skin. She desires to purchase other cosmetic products from retailers such as
9 B&BW, and regularly visits stores where Defendants' products are sold. Without purchasing and
10 having the products professionally tested or consulting scientific experts, Ms. Perez will be
11 unable to determine if representations that Defendants make regarding the properties and features
12 of its products are true. Ms. Perez understands that the formulation of Defendants' Products may
13 change over time or that Defendants may choose to market other products that contain
14 misleading representations about the product. But as long as Defendants may use inaccurate
15 representations about the capabilities of their products, then when presented with Defendants'
16 advertising, Ms. Perez continues to have no way of determining whether the representations
17 regarding those capabilities are true. Thus, Ms. Perez is likely to be repeatedly presented with
18 false or misleading information when shopping and unable to make informed decisions about
19 whether to purchase Defendants' products. Thus, she is likely to be repeatedly misled by
20 Defendants' conduct, unless and until Defendants are compelled to utilize accurate
21 representations regarding the actual capabilities of hyaluronic acid.

22 **2. Andrea Brooks**

23 43. Plaintiff Andrea Brooks is a consumer who is interested in beauty products.

24 44. While browsing the Website in late 2018, Ms. Brooks saw the Hyaluronic Acid
25 Products. She saw the images of the Hyaluronic Acid Products' packaging and container on the
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1 Website, and read the representations made there. Among other things, she read the
2 representations that (i) the hyaluronic acid in the product “attracts and retains up to 1,000x its
3 weight in water”; (ii) that the product “instantly replenish moisture for smooth, hydrated skin”;
4 (iii) that the product “make skin look smoother and more supple”; (iv) “Fast-absorbing formula
5 immediately hydrates”; and (v) that “Hyaluronic acid is a water loving molecule.” She also read
6 that the Product was “Clinically tested to instantly lock in moisture.”

7 45. Ms. Brooks reasonably understood these representations to mean that the Hyaluronic
8 Acid Products would be exceptionally hydrating on her skin. On the basis of these
9 representations, Ms. Brooks decided to purchase B&BW Hyaluronic Acid Hydrating Body
10 Cream. On December 14, 2018, she paid approximately \$30.00 for four tubes of Hyaluronic
11 Acid Hydrating Body Cream.²

12 46. She received the product shortly thereafter and began using it. She tried the
13 Hyaluronic Acid Product. After trying it, she realized that they did not improve the hydration of
14 her skin.

15 47. Had Ms. Brooks known that any of Defendants’ representations set forth in paragraph
16 44 above were false, she would not have purchased the Hyaluronic Acid Hydrating Body Cream,
17 or would have paid less for it.

18 48. Ms. Brooks continues to desire products that offer exceptional moisturizing qualities,
19 regardless of whether those products contain hyaluronic acid. She desires to purchase other
20 moisturizing products from retailers such as B&BW, and regularly visits stores where
21 Defendants’ products are sold. Without purchasing and having the products professionally tested
22 or consulting scientific experts, Ms. Brooks will be unable to determine if representations that
23 Defendants make regarding the properties and features of hyaluronic acid and/or the moisturizing
24 properties of its products are true. Ms. Brooks understands that the formulation of the Hyaluronic
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26 ² Included in the purchase price, but not at issue here, was a tube of B&BW fresh sparkling
snow hand cream.

1 Acid Products may change over time or that Defendants may choose to market other products
2 with hyaluronic acid that contain misleading representations about the product. But as long as
3 Defendants may use inaccurate representations about the moisturizing capabilities of hyaluronic
4 acid, then when presented with Defendants' packaging, Ms. Brooks continues to have no way of
5 determining whether the representations regarding those capabilities are true. Thus, Ms. Brooks
6 is likely to be repeatedly presented with false or misleading information when shopping and
7 unable to make informed decisions about whether to purchase Defendants' products. Thus, she is
8 likely to be repeatedly misled by Defendants' conduct, unless and until Defendants are
9 compelled to utilize accurate representations regarding the actual capabilities of hyaluronic acid.
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11 **Class Allegations**

12 **A. The Class**

13 49. Plaintiffs seek to represent a "Class" of persons, defined as: "All natural persons who,
14 between July 21, 2017 and the present, purchased, in California, any Hyaluronic Acid Product."

15 50. Excluded from the Class are Defendants, their affiliates, successors and assigns,
16 officers and directors, and members of their immediate families.

17 51. The Class is so numerous that joinder of all members is impracticable. The precise
18 number of members in the Class is not yet known to Plaintiffs, but they estimate that it is well in
19 excess of 1,000 people.

20 52. There are questions of law and fact that are common to the Class, including, but not
21 limited to, the following:

- 22 • whether Defendants misrepresented or omitted material facts in connection with the
23 promotion, marketing, advertising, packaging, labeling and sale of the Hyaluronic Acid
24 Products;
- 25 • whether Defendants represented that products in the Hyaluronic Acid Products have
26 characteristics, benefits, uses or qualities that they do not have;

- whether Defendants misled class members by representing that the hyaluronic acid in the Hyaluronic Acid Products “attracts and retains up to 1,000 times its weight in water”;
- whether Defendants misled class members by representing that the hyaluronic acid in the Hyaluronic Acid Products “instantly replenish moisture for smooth, hydrated skin”;
- whether Defendants misled class members by representing that the hyaluronic acid in the Hyaluronic Acid Products “make skin look smoother and more supple”;
- whether Defendants misled class members by representing that the hyaluronic acid in the Hyaluronic Acid Products “Fast-absorbing formula immediately hydrates”;
- whether Defendants misled class members by representing that the hyaluronic acid in the Hyaluronic Acid Products “Hyaluronic acid is a water loving molecule”; are false.
- whether Defendants misled class members by representing that the hyaluronic acid in the Hyaluronic Acid Products was “Clinically tested to instantly lock in moisture”;
- whether Defendants’ nondisclosures and misrepresentations would be material to a reasonable consumer;
- whether the nondisclosures and misrepresentations were likely to deceive a reasonable consumer in violation of the consumer protection statutes of California;
- whether Defendants were unjustly enriched;
- whether Defendants’ unlawful, unfair and/or deceptive practices harmed Plaintiffs and the members of the Class;
- whether Plaintiffs and the members of the Class are entitled to damages, restitution, and/or equitable or injunctive relief;
- whether Defendants breached their obligations to the Class;
- whether Defendants engaged in the alleged conduct knowingly, recklessly, or negligently;
- the amount of revenues and profits Defendants received and/or the amount of monies or other obligations lost by class members as a result of such wrongdoing;
- whether class members are entitled to injunctive relief and other equitable relief and, if

1 so, what is the nature of such relief; and

- 2 • whether class members are entitled to payment of actual, incidental, consequential,
3 exemplary, and/or statutory damages plus interest, and if so, what is the nature of such
4 relief.

5 53. Plaintiffs' claims against Defendants are typical of the claims of the Class because
6 they and all other members of the class purchased the Hyaluronic Acid Products with the same
7 attendant advertising, warranties, and representations. With respect to the class allegations,
8 Plaintiffs were subjected to the exact same business practices and representations.

9 54. Plaintiffs will fairly and adequately protect the interests of the Class.

10 55. Plaintiffs have demonstrated their commitment to the case, has diligently educated
11 themselves as to the issues involved, and to the best of their knowledge does not have any
12 interests adverse to the proposed class.

13 56. The questions of law and fact common to the members of the Class predominate over
14 any questions affecting only individual members.

15 57. A class action is superior to other available methods for a fair and efficient
16 adjudication of this controversy as many members of the proposed Class have damages arising
17 from Defendants' wrongful course of conduct which would not be susceptible to individualized
18 litigation of this kind, including, but not limited to, the costs of experts and resources that may be
19 required to examine the business practices in question.

20 58. Given the relative size of damages sustained by the individual members of the Class,
21 the diffuse impact of the damages, and homogeneity of the issues, the interests of members of the
22 Class individually controlling the prosecution of separate actions is minimal.

23 59. There is no litigation already commenced for these class representatives, nor is there
24 anticipated to be subsequent litigation commenced by other members of the Class concerning
25 Defendants' alleged conduct. Consequently, concerns with respect to the maintenance of a class
26 action regarding the extent and nature of any litigation already commenced by members of the

1 Class are non-existent.

2 60. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
3 management of this Class Action Complaint that would preclude its maintenance as a class
4 action.

5 **Causes of Action**

6 **First Cause of Action** 7 **(Violation of the Consumers Legal Remedies Act,** 8 **California Civil Code § 1750, et seq.)** 9 **On Behalf of Plaintiffs and the Class**

10 61. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
11 Complaint as if set forth herein.

12 62. This cause of action is brought pursuant to the California Consumers Legal Remedies
13 Act, California Civil Code § 1750, et seq. (“CLRA”).

14 63. Defendants’ actions, representations and conduct have violated, and continue to
15 violate the CLRA, because they extend to transactions that are intended to result, or which have
16 resulted, in the sale of goods to consumers.

17 64. Plaintiffs and other members of the Class are “consumers” as that term is defined by
18 the CLRA in California Civil Code § 1761(d).

19 65. The products that Plaintiffs and similarly situated members of the Class purchased
20 from Defendants are “goods” within the meaning of California Civil Code § 1761.

21 66. By engaging in the actions, representations, and conduct set forth in this Class Action
22 Complaint, Defendants have violated, and continue to violate, §§ 1770(a)(5), 1770(a)(7), and
23 1770(a)(9) of the CLRA. In violation of California Civil Code § 1770(a)(5), Defendants
24 represented that goods have approval, characteristics, uses, benefits, and qualities that they do
25 not have. In violation of California Civil Code § 1770(a)(7), Defendants’ acts and practices
26 constitute improper representations that the goods and/or services it sells are of a particular

1 standard, quality, or grade, when they are of another. In violation of California Civil Code
2 §1770(a)(9), Defendants advertised goods with intent not to sell them as advertised.

3 67. Specifically, Defendants' acts and practices caused Plaintiffs and similarly situated
4 consumers to falsely believe (i) that the hyaluronic acid in the Hyaluronic Acid Products "attracts
5 and retains up to 1,000 times its weight in water from moisture in the atmosphere"; (ii) that the
6 hyaluronic acid in the Hyaluronic Acid Products "transforms atmospheric vapor into fresh, pure
7 water from the clouds"; (iii) that the hyaluronic acid in the Hyaluronic Acid Products provides
8 skin "with a continuous burst of intense hydration that lasts up to 72 hours"; (iv) that the
9 hyaluronic acid in Defendants' products "draws water vapor from the clouds to help lock in
10 moisture"; and (v) that the Hyaluronic Acid Products "transform[] atmospheric vapor into fresh,
11 pure water from the clouds, providing your skin with a continuous burst of intense hydration that
12 lasts up to 72 hours."

13 68. Plaintiffs request that this Court enjoin Defendants from continuing to employ the
14 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
15 § 1780(a)(2). Plaintiffs' remedies at law are inadequate, or will be inadequate, to cure and
16 prevent Defendants' ongoing conduct. Such misconduct by Defendants, unless and until
17 enjoined and restrained by order of this Court, will continue to cause injury in fact to the general
18 public and the loss of money and property in that Defendants will continue to violate the laws of
19 California, unless specifically ordered to comply with the same. This expectation of future
20 violations will require current and future customers to repeatedly and continuously seek legal
21 redress in order to recover monies paid to Defendants to which Defendants are not entitled.
22 Plaintiffs, those similarly situated and/or other consumers nationwide have no other adequate
23 remedy at law to ensure future compliance with the Consumer Legal Remedies Act alleged to
24 have been violated herein.
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69. More than thirty days prior to the filing of the original Class Action Complaint, Ms. Brooks gave notice and demand that Defendants correct, repair, replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of herein. Defendants failed to do so in that, among other things, they failed to identify similarly situated customers, notify them of their right to correction, repair, replacement or other remedy, and provide that remedy. Accordingly, Plaintiffs seek, pursuant to California Civil Code § 1780(a)(3), on behalf of themselves and those similarly situated class members, compensatory damages, punitive damages and restitution of any ill-gotten gains due to Defendants' acts and practices.

70. Plaintiffs request that this Court award them costs and reasonable attorneys' fees pursuant to California Civil Code § 1780(d).

Second Cause of Action
(False Advertising, Business and Professions Code § 17500, et seq. ("FAL"))
On Behalf of Plaintiffs and the Class

71. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action Complaint as if set forth herein.

72. Beginning at an exact date unknown to Plaintiffs, but within three (3) years preceding the filing of the Class Action Complaint, Defendants have made untrue, false, deceptive and/or misleading statements in connection with the advertising and marketing of Hyaluronic Acid Products.

73. Defendants have made representations and statements (by omission and commission) that lead reasonable consumers to believe: (i) that the hyaluronic acid "attracts and retains up to 1,000x its weight in water"; (ii) that the product "instantly replenish moisture for smooth, hydrated skin"; (iii) that the product "make skin look smoother and more supple"; (iv) "Fast-absorbing formula immediately hydrates"; (v) that "Hyaluronic acid is a water loving molecule"; and (vi) that the product "Clinically tested to instantly lock in moisture." Defendants, however, deceptively failed to inform consumers that these representations are false.

1 74. Plaintiffs and those similarly situated relied to their detriment on Defendants' false,
2 misleading and deceptive advertising and marketing practices. Had Plaintiffs and those similarly
3 situated been adequately informed and not intentionally deceived by Defendants, they would
4 have acted differently by, without limitation, paying less for the Hyaluronic Acid Products.

5 75. Defendants' acts and omissions are likely to deceive the general public.

6 76. Defendants engaged in these false, misleading and deceptive advertising and
7 marketing practices to increase its profits. Accordingly, Defendants have engaged in false
8 advertising, as defined and prohibited by section 17500, et seq. of the California Business and
9 Professions Code.

10 77. The aforementioned practices, which Defendants have used, and continue to use, to
11 their significant financial gain, also constitute unlawful competition and provide an unlawful
12 advantage over Defendants' competitors as well as injury to the general public.

13 78. Plaintiffs seek, on behalf of themselves and those similarly situated, full restitution of
14 monies, as necessary and according to proof, to restore any and all monies acquired by
15 Defendants from Plaintiffs, the general public, or those similarly situated by means of the false,
16 misleading and deceptive advertising and marketing practices complained of herein, plus interest
17 thereon.

18 79. Plaintiffs seek, on behalf of those similarly situated, an injunction to prohibit
19 Defendants from continuing to engage in the false, misleading and deceptive advertising and
20 marketing practices complained of herein. The acts complained of herein occurred, at least in
21 part, within three (3) years preceding the filing of this Class Action Complaint.

22 80. Plaintiffs and those similarly situated are further entitled to and do seek both a
23 declaration that the above-described practices constitute false, misleading and deceptive
24 advertising, and injunctive relief restraining Defendants from engaging in any such advertising
25 and marketing practices in the future. Plaintiffs' remedies at law are inadequate, or will be
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1 inadequate, to cure and prevent Defendants' ongoing conduct. Such misconduct by Defendants,
 2 unless and until enjoined and restrained by order of this Court, will continue to cause injury in
 3 fact to the general public and the loss of money and property in that Defendants will continue to
 4 violate the laws of California, unless specifically ordered to comply with the same. This
 5 expectation of future violations will require current and future customers to repeatedly and
 6 continuously seek legal redress in order to recover monies paid to Defendants to which
 7 Defendants are not entitled. Plaintiffs, those similarly situated and/or other consumers
 8 nationwide have no other adequate remedy at law to ensure future compliance with the
 9 California Business and Professions Code alleged to have been violated herein.

10 81. As a direct and proximate result of such actions, Defendants and the other members of
 11 the Class have suffered, and continue to suffer, injury in fact and have lost money and/or
 12 property as a result of such false, deceptive and misleading advertising in an amount which will
 13 be proven at trial, but which is in excess of the jurisdictional minimum of this Court.

14 **Third Cause of Action**
 15 **(Fraud, Deceit, and/or Misrepresentation)**
 16 **On Behalf of Plaintiffs and the Class**

17 82. Plaintiffs reallege and incorporate by reference all preceding paragraphs of this
 18 complaint as if fully set forth herein.

19 83. Defendants' representations to Plaintiffs and those similarly situated on the Website,
 20 on product packaging, on social media channels, and through their stores were false. In
 21 particular, these representations were false: (i) that the hyaluronic acid "attracts and retains up to
 22 1,000x its weight in water"; (ii) that the product "instantly replenish moisture for smooth,
 23 hydrated skin"; (iii) that the product "make skin look smoother and more supple"; (iv) "Fast-
 24 absorbing formula immediately hydrates"; (v) that "Hyaluronic acid is a water loving molecule";
 25 and (vi) that the product "Clinically tested to instantly lock in moisture."

26 84. Defendants knew that these representations were false when they made them.

1 Defendants run one of the largest cosmetics companies in the world. Accordingly, they chose the
2 ingredients they incorporate in their products, and they are fully aware of the properties and
3 actual capabilities of those ingredients. Defendants are also aware of scientific research (or the
4 lack thereof) regarding those ingredients. Further, Defendants test their products on human skin,
5 and such tests would have revealed the falsity of Defendants' representations.

6 85. Defendants further concealed, suppressed, and omitted material facts that would have
7 revealed that the representations regarding hyaluronic acid were false and misleading.

8 86. Defendants' misrepresentations and omissions were material at the time they were
9 made. They concerned material facts that were essential to the analysis undertaken by Plaintiffs
10 and those similarly situated as to whether to purchase the Hyaluronic Acid Products.

11 87. Plaintiffs and those similarly situated reasonably relied to their detriment on
12 Defendants' representations. Specifically, Plaintiffs and those similarly situated purchased the
13 Hyaluronic Acid Products because they believed Defendants' representations regarding
14 hyaluronic acid. This reliance was reasonable because Plaintiffs and those similarly situated
15 reasonably expected that Defendants would have scientific substantiation for their claims.
16 Plaintiffs and those similarly situated had no reason to doubt that established "clinical skin care"
17 company such as Defendants would not use sound science when developing and marketing their
18 products.

19 88. Had Plaintiffs and those similarly situated been adequately informed and not
20 intentionally deceived by Defendants, they would have acted differently by, without limitation,
21 not purchasing (or paying less for) the Hyaluronic Acid Products.

22 89. Defendants had a duty to inform members of the Class at the time of their purchase
23 that the hyaluronic acid in the Hyaluronic Acid Products: (i) that the hyaluronic acid "attracts
24 and retains up to 1,000x its weight in water"; (ii) that the product "instantly replenish moisture
25 for smooth, hydrated skin"; (iii) that the product "make skin look smoother and more supple";
26

(iv) “Fast-absorbing formula immediately hydrates”; (v) that “Hyaluronic acid is a water loving molecule”; and (vi) that the product “Clinically tested to instantly lock in moisture.” In making their representations and omissions, Defendants breached their duty to class members.

Defendants also gained financially from, and as a result of, their breach.

90. By and through such fraud, deceit, misrepresentations and/or omissions, Defendants intended to induce Plaintiffs and those similarly situated to alter their position to their detriment. Specifically, Defendants fraudulently and deceptively induced Plaintiffs and those similarly situated to, without limitation, purchase Hyaluronic Acid Products.

91. As a direct and proximate result of Defendants’ misrepresentations and omissions, Plaintiffs and those similarly situated have suffered damages. In particular, Plaintiffs seek to recover on behalf of herself and those similarly situated the amount of the price premium they paid (i.e., the difference between the price consumers paid for the Hyaluronic Acid Products and the price they would have paid but for Defendants’ misrepresentations), in an amount to be proven at trial using econometric or statistical techniques such as hedonic regression or conjoint analysis.

92. Defendants’ conduct as described herein was willful and malicious and was designed to maximize Defendants’ profits even though Defendants knew that it would cause loss and harm to Plaintiffs and those similarly situated.

Fourth Cause of Action
(Negligent Misrepresentation)
On Behalf of Plaintiffs and the Class

93. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action Complaint as if set forth herein.

94. In marketing and selling the Hyaluronic Acid Products to consumers, Defendants made the following false and misleading statements: (i) that the hyaluronic acid “attracts and retains up to 1,000x its weight in water”; (ii) that the product “instantly replenish moisture for

1 smooth, hydrated skin”; (iii) that the product “make skin look smoother and more supple”; (iv)
2 “Fast-absorbing formula immediately hydrates”; (v) that “Hyaluronic acid is a water loving
3 molecule”; and (vi) that the product “Clinically tested to instantly lock in moisture.” Defendants,
4 however, deceptively failed to inform consumers that all of these statements are false.
5 Defendants also deceptively failed to inform consumers that the hyaluronic acid in the
6 Hyaluronic Acid Products is already saturated by the time it is applied to the a user’s skin, and
7 that to the extent it is even capable of absorbing moisture, it would absorb moisture from the
8 user’s skin, not from the atmosphere.

9 95. These representations were material at the time they were made. They concerned
10 material facts that were essential to the decision of Plaintiffs and those similarly situated
11 regarding how much to pay for the Hyaluronic Acid Products.

12 96. Defendants made identical misrepresentations and omissions to members of the Class
13 regarding the Hyaluronic Acid Products.

14 97. Defendants should have known their representations were false, and had no reasonable
15 grounds for believing them to be true when they were made. Defendants run one of the largest
16 cosmetics companies in the world. Accordingly, they chose the ingredients they incorporate in
17 their products, and they are fully aware of the properties and actual capabilities of those
18 ingredients. Defendants are also aware of scientific research (or the lack thereof) regarding those
19 ingredients. Further, Defendants test their products on human skin, and such tests would have
20 revealed the falsity of Defendants’ representations.

21 98. By and through such negligent misrepresentations, Defendants intended to induce
22 Plaintiffs and those similarly situated to alter their position to their detriment. Specifically,
23 Defendants negligently induced Plaintiffs and those similarly situated, without limitation, to
24 purchase the Hyaluronic Acid Products at the price they paid.

25 99. Plaintiffs and those similarly situated reasonably relied on Defendants’
26

1 representations. Specifically, Plaintiffs and those similarly situated paid as much as they did for
 2 Hyaluronic Acid Products because of the false and misleading representations described herein.

3 100. Because they reasonably relied on Defendants' false representations, Plaintiffs and
 4 those similarly situated were harmed in the amount of the price premium they paid (i.e., the
 5 difference between the price consumers paid for Hyaluronic Acid Products and the price they
 6 would have paid but for Defendants' misrepresentations), in an amount to be proven at trial using
 7 econometric or statistical techniques such as hedonic regression or conjoint analysis.

8 **Fifth Cause of Action**
 9 **(Unfair, Unlawful and Deceptive Trade Practices,**
 10 **Business and Professions Code § 17200, et seq.)**
 11 **On Behalf of Plaintiffs and the Class**

12 101. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
 13 Complaint as if set forth herein.

14 102. Within four years preceding the filing of this Class Action Complaint, and at all times
 15 mentioned herein, Defendants have engaged, and continue to engage, in unfair, unlawful and
 16 deceptive trade practices in California by carrying out the unfair, deceptive and unlawful
 17 business practices outlined in this Class Action Complaint. In particular, in connection with the
 18 marketing of the Hyaluronic Acid Products, Defendants have engaged, and continue to engage,
 19 in unfair, unlawful and deceptive trade practices by, without limitation, the following:

- 20 a. falsely representing to Plaintiffs and those similarly situated that the hyaluronic acid in
 the Hyaluronic Acid Products "attracts and retains up to 1,000x its weight in water";
- 21 b. falsely representing to Plaintiffs and those similarly situated that the hyaluronic acid in
 the Hyaluronic Acid Products "instantly replenish moisture for smooth, hydrated skin";
- 22 c. falsely representing to Plaintiffs and those similarly situated that the hyaluronic acid in
 the Hyaluronic Acid Products provides skin "make skin look smoother and more supple";
- 23 d. falsely representing to Plaintiffs and those similarly situated that the hyaluronic acid in
 the Hyaluronic Acid Products provides skin "make skin look smoother and more supple";
- 24
- 25
- 26 Defendants' products "Fast-absorbing formula immediately hydrates";

- e. falsely representing to Plaintiffs and those similarly situated that the Hyaluronic Acid Products “Hyaluronic acid is a water loving molecule”;
- f. falsely representing to Plaintiffs and those similarly situated that the Hyaluronic Acid Products are “Clinically tested to instantly lock in moisture”;
- g. engaging in fraud and negligent misrepresentation as described herein;
- h. violating the CLRA as described herein; and
- i. violating the FAL as described herein.

103. Plaintiffs and those similarly situated relied to their detriment on Defendants’ unfair, deceptive and unlawful business practices. Had Plaintiffs and those similarly situated been adequately informed and not deceived by Defendants, they would have acted differently by, without limitation, paying less for the Hyaluronic Acid Products.

104. Defendants’ acts and omissions are likely to deceive the general public.

105. Defendants engaged in these unfair practices to increase their profits. Accordingly, Defendants have engaged in unlawful trade practices, as defined and prohibited by section 17200, et seq. of the California Business and Professions Code.

106. The aforementioned practices, which Defendants have used to their significant financial gain, also constitute unlawful competition and provides an unlawful advantage over Defendants’ competitors as well as injury to the general public.

107. As a direct and proximate result of such actions, Plaintiffs and the other members of the Class have suffered and continue to suffer injury in fact and have lost money and/or property as a result of such deceptive, unfair and/or unlawful trade practices and unfair competition in an amount which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court. Among other things, Plaintiffs and the class lost the amount of the price premium they paid (i.e., the difference between the price consumers paid for Hyaluronic Acid Products and the price they would have paid but for Defendants’ misrepresentations), in an amount to be proven at

1 trial using econometric or statistical techniques such as hedonic regression or conjoint analysis;

2 108. Plaintiffs seeks, on behalf of those similarly situated, a declaration that the above-
3 described trade practices are fraudulent and unlawful.

4 109. Plaintiffs seeks, on behalf of those similarly situated, an injunction to prohibit
5 Defendants from offering the Hyaluronic Acid Products within a reasonable time after entry of
6 judgment, unless Defendants modify the Website and other marketing materials to remove the
7 misrepresentations and to disclose the omitted facts. Such misconduct by Defendants, unless and
8 until enjoined and restrained by order of this Court, will continue to cause injury in fact to the
9 general public and the loss of money and property in that Defendants will continue to violate the
10 laws of California, unless specifically ordered to comply with the same. This expectation of
11 future violations will require current and future consumers to repeatedly and continuously seek
12 legal redress in order to recover monies paid to Defendants to which Defendants were not
13 entitled. Plaintiffs, those similarly situated, and/or other consumers have no other adequate
14 remedy at law to ensure future compliance with the California Business and Professions Code
15 alleged to have been violated herein.

16 **Sixth Cause of Action**
17 **(Quasi-Contract Claim for Restitution (Unjust Enrichment))**
18 **On Behalf of Plaintiffs and the Class**

19 110. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
20 Complaint as if set forth herein.

21 111. Plaintiffs and the Class members conferred a benefit on the Defendants by purchasing
22 Hyaluronic Acid Products.

23 112. Defendants have been unjustly enriched in retaining the revenues from these purchases
24 of Hyaluronic Acid Products. Retention of those revenues is unjust and inequitable because
25 Defendants falsely represented: i) that the hyaluronic acid “attracts and retains up to 1,000x its
26 weight in water”; (ii) that the product “instantly replenish moisture for smooth, hydrated skin”;

(iii) that the product “make skin look smoother and more supple”; (iv) “Fast-absorbing formula immediately hydrates”; (v) that “Hyaluronic acid is a water loving molecule”; and (vi) that the product “Clinically tested to instantly lock in moisture.” These representations caused injuries to Plaintiffs and those similarly situated because they paid a price premium due to the misleading labeling and advertising connected to the Hyaluronic Acid Products.

113. Because Defendants’ retention of the non-gratuitous benefit conferred on them by Plaintiffs and those similarly situated is unjust and inequitable, Defendants must pay restitution to Plaintiffs and the Class members for their unjust enrichment, as ordered by the Court.

114. Plaintiffs, therefore, seeks an order requiring Defendants to make restitution to her and other members of the Class. This remedy is pleaded as an alternative remedy, to the extent that Plaintiffs’ remedies at law are inadequate to cure and prevent Defendants’ ongoing conduct.

Prayer for Relief

WHEREFORE, Plaintiffs, individually and on behalf all others similarly situated, respectfully requests that this Court enter a judgment against Defendants and in favor of Plaintiffs, and grant the following relief:

A. Determine that this action may be maintained as a Class action with respect to the Classes identified herein and certify it as such under Rule 23 of the Federal Rules of Civil Procedure or alternatively certify all issues and claims that are appropriately certified, and designate and appoint Plaintiffs as Class Representatives of their respective classes, and Plaintiffs’ counsel as Class Counsel;

B. Declare, adjudge and decree the conduct of the Defendants as alleged herein to be unlawful, unfair and/or deceptive;

C. Enjoining Defendants, directly or through any company, corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any product containing hyaluronic acid, from making a representation about the product’s or ingredient’s

1 ability to hold, retain, or absorb water in any quantity and from any source unless, at the time the
2 representation is made, Defendants possess and rely upon competent and reliable evidence, that,
3 when considered in light of the entire body of relevant and reliable evidence, is sufficient in
4 quantity and quality based on standards generally accepted in the relevant fields, to support such
5 representation. For the purposes of this paragraph, “competent and reliable evidence” means
6 tests, analyses, research, studies, or other evidence based on the expertise of professionals in the
7 relevant area, that have been conducted and evaluated in an objective manner by qualified
8 persons, using procedures generally accepted in the profession to yield accurate and reliable
9 results.

10 D. Enjoining Defendants, directly or through any company, corporation, partnership,
11 subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling,
12 packaging, advertising, promotion, offering for sale, sale, or distribution of any product
13 containing plant stem cells, from making a representation about the product’s or plant stem cells’
14 ability to repair, rejuvenate, revitalize or otherwise improve the skin unless, at the time the
15 representation is made, Defendants possess and rely upon competent and reliable evidence, that,
16 when considered in light of the entire body of relevant and reliable evidence, is sufficient in
17 quantity and quality based on standards generally accepted in the relevant fields, to support such
18 representation. For the purposes of this paragraph, “competent and reliable evidence” means
19 tests, analyses, research, studies, or other evidence based on the expertise of professionals in the
20 relevant area, that have been conducted and evaluated in an objective manner by qualified
21 persons, using procedures generally accepted in the profession to yield accurate and reliable
22 results.

23 E. Enjoining Defendants, directly or through any company, corporation, partnership,
24 subsidiary, division, or other device, in connection with the manufacturing, labeling, packaging,
25 advertising, promotion, offering for sale, sale, or distribution of any cosmetic product, to not
26 provide to others the means and instrumentalities with which to make any representation
prohibited by Paragraphs C and D above. For the purposes of this paragraph, “means and

instrumentalities” means any information, including, but not necessarily limited to, any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of such product or service.

F. Award Plaintiffs and the Class actual, compensatory damages, as proven at trial;

G. Award Plaintiffs and the Class restitution of all monies paid to Defendants as a result of unlawful, deceptive, and unfair business practices;

H. Award Plaintiffs and the Class exemplary damages in such amount as proven at trial;

I. Award Plaintiffs and the Class reasonable attorneys’ fees, costs, and pre- and post-judgment interest; and

J. Award Plaintiffs and the Class such other further and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

Jury Trial Demand

Plaintiffs demand a trial by jury.

Respectfully submitted,

Dated: July 21, 2021

GUTRIDE SAFIER LLP



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Attorneys for Plaintiffs

EXHIBIT A

I, CARMEN PEREZ, declare:

1. I am a Plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2215.5 and California Civil Code section 1780(d).

3. I reside in San Jose, California. I purchased Bath & Body Works Water Hyaluronic Acid Hydrating Cream in or around the summer of 2019 from a Bath & Body Works store in Milpitas, California.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this 21st day of July 2021, in San Jose, California.

DocuSigned by:

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Carmen Perez